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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,857	11/13/2003	Beatrice Renault	05725.1275-00	5035

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EXAMINER	
RUSSEL, JEFFREY E	

ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/705,857	RENAULT, BEATRICE	
	Examiner	Art Unit	
	Jeffrey E. Russel	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 8-26* is/are rejected.

7)☒ Claim(s) *6 and 7* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Applicant's election with traverse of SEQ ID NO:2, including claims 2 and 7, including the variants of claim 3, including SEQ ID NO:2 as recited in claim 4, part b, and including the mixtures of claim 4, parts d and e, to the extent that they require SEQ ID NO:2, in the reply filed on January 10, 2005 is acknowledged.

The requirement is still deemed proper and is therefore made FINAL.

2. The English translation of provisional application 60/427,575 and the statement that the translation is accurate were received on September 2, 2005 and satisfy the requirements set forth in 37 CFR 1.78(a)(5).

Instant claims 1-26 are deemed to be entitled under 35 U.S.C. 119(e) to the benefit of the filing date of provisional application 60/427,575 because the provisional application, under the test of 35 U.S.C. 112, first paragraph, discloses the instant claimed invention.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5, 12, 13, 15, 16, and 19-26 are rejected under 35 U.S.C. 102(a) and (b) as being anticipated by "British Nursing News Online-News Archives" as evidenced by "Skin Care Products Recommended by Dermatologists - DDF - Wrinkle Relax" and "DDF Wrinkle Relax/Faux-Tox - cosmetic surgery news". "British Nursing News Online-News Archives", page 3, teaches that a cosmetic product named "Faux-Tox", a cream, was supplied from New York and was on sale in Edinburgh at least by November 3, 2002. The cosmetic product reduces muscle contractions which cause wrinkles, and smoothes out fine lines. "Skin Care Products Recommended by Dermatologists - DDF - Wrinkle Relax" teaches that a cosmetic product named "Wrinkle Relax", aka 'Faux-Tox", is comprised of Acetyl Hexapeptide-3 and magnesium

ascorbyl, and additionally contains glycerin and propylene glycol (which are moisturizers), water (a solvent), and Red #40 (a dyestuff). "DDF Wrinkle Relax/Faux-Tox - cosmetic surgery news" teaches that cosmetic product named "Wrinkle Relax", aka 'Faux-Tox", is comprised of Argireline and magnesium ascorbyl. Acetyl Hexapeptide-3/Argireline correspond to Applicants' peptide having the amino acid sequence SEQ ID NO:2. Magnesium ascorbyl corresponds to Applicants' magnesium salt which is a calcium channel inhibitor. A "cream" is defined in Stedman's Medical Dictionary, 27th edition, as being a semi-solid emulsion, either of the O/W or the W/O type. Because water is listed as the most predominant ingredient by "Skin Care Products Recommended by Dermatologists - DDF - Wrinkle Relax", Wrinkle Relax/Faux-Tox would have been expected inherently to be in the form of an O/W emulsion.

5. Claims 8-11 and 14 are rejected under 35 U.S.C. 103(a) as being obvious over "British Nursing News Online-News Archives" as evidenced by "Skin Care Products Recommended by Dermatologists - DDF - Wrinkle Relax" and "DDF Wrinkle Relax/Faux-Tox - cosmetic surgery news". Application of the references is the same as in the above rejection of claims 1-5, 12, 13, 15, 16, and 19-26. The references do not disclose concentrations for the various components present in Wrinkle Relax/Faux-Tox. It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to determine all operable and optimal concentrations for the components of Wrinkle Relax/Faux-Tox because component concentration is an art-recognized result-effective variable which is routinely determined and optimized in the cosmetic arts.

6. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being obvious over "British Nursing News Online-News Archives" as evidenced by "Skin Care Products Recommended by

Dermatologists - DDF - Wrinkle Relax" and "DDF Wrinkle Relax/Faux-Tox - cosmetic surgery news" as applied against claims 1-5, 12, 13, 15, 16, and 19-26 above, and further in view of Simon et al (U.S. Patent No. 5,730,972). The references applied in the above rejection do not teach the presence of a UVA-active photoprotective agent. Simon et al teach including a UVA screening agent in concentrations of 0/1% to 10% in compositions used to combat skin marks, such as wrinkles and fine lines, and/or aging of the skin. See, e.g., the abstract, column 1, line 66 - column 2, line 2; and claims 1 and 10. It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to include the UVA screening agents of Simon et al in Wrinkle Relax/Faux-Tox because the UVA screening agents of Simon et al are used in cosmetic compositions with similar uses to Wrinkle Relax/Faux-Tox, and because including the UVA screening agents of Simon et al would have the benefit of providing an additional mechanism whereby wrinkles and fine lines could be prevented.

7. Applicant's arguments filed September 2, 2005 have been fully considered but they are not persuasive.

The obviousness rejections over Besne (U.S. Patent Application Publication 2003/0235599) and over the French Patent 2,838,344 are withdrawn. There is not deemed to be sufficient motivation under 35 U.S.C. 103 to choose the particular combination of muscle relaxants necessary to arrive at Applicant's claimed composition.

The reference "DDF Wrinkle Relax (formerly Faux-Tox) by BeautyLand", cited and applied in sections 11-13 of the previous Office action, is no longer relied upon to reject Applicants' claims. As noted by Applicant, it is not clear that the copyright date listed in the

printout can be reasonably relied upon to establish a sale date for the particular "DDF Wrinkle Relax (formerly Faux-Tox) by BeautyLand" product described in the printout.

The obviousness rejections based upon "British Nursing News Online-News Archives" as the primary reference are maintained. The reference itself is a printed publication occurring in British Nursing News Online, dated November 3, 2002, and accordingly is available as prior art under 35 U.S.C. 102(a). Note that because the instant claims are deemed to be entitled under 35 U.S.C. 119(e) to the benefit of the filing date of provisional application 60/427,575 and because any on-sale activity evidenced by the reference did not take place more than a year before this filing date, any such on-sale activity does not constitute prior art under 35 U.S.C. 102(b).

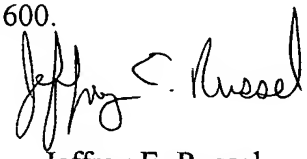
8. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (571) 272-0969. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Bruce Campell can be reached at (571) 272-0974. The fax number for formal communications to be entered into the record is (571) 273-8300; for informal communications such as proposed amendments, the fax number (571) 273-0969 can be used. The telephone number for the Technology Center 1600 receptionist is (571) 272-1600.



Jeffrey E. Russel

Primary Patent Examiner

Art Unit 1654

JRussel

September 19, 2005